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ABSTRACT

In recent years, arguments have been advanced from a number of theoretical perspectives in social science that the modern state faces a crisis of legitimacy in its relationship to its society and its citizens. Much governmental behavior in the area of educational policy can be interpreted as a strategy of "compensatory legitimation"--that is, as an attempt by the state to retrieve some of its legitimacy. A comparison of educational policy in West Germany and the United States shows how three major policy modes can be understood as strategies of compensatory legitimation. The three modes include the increased involvement of the courts in educational policy ("legitimation by legalization"); government utilization of experts in educational experimentation and planning in the policy-making process ("legitimation by expertise"); and the development and introduction of participatory forms of educational decision-making ("legitimation by participation"), as in the case of curriculum reform. Further research should investigate whether these strategies are successful and whether they override other policy goals, such as educational reform. (Author/RW)

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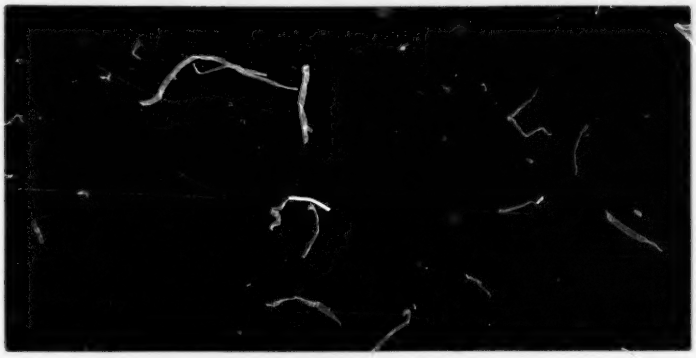

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COMPENSATORY LEGITIMATION IN EDUCATIONAL POLICY: LEGALIZATION, EXPERTISE, AND PARTICIPATION IN COMPARATIVE PERSPECTIVE

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ABSTRACT

One of the more notable developments in recent years both in social science theory and in political analysis has been the increasing attention to the issue of the legitimacy of the modern state. From a number of different theoretical points of view, arguments have been advanced that the modern state faces an increasingly acute "crisis" of legitimacy which manifests itself in such problems as "non-governability," "overload," "lack of steering capacity," "credibility gaps," or more generally in the contradictions inherent in advanced capitalist societies. This paper brings some of the theoretical insights to be gained from this debate to bear upon the comparative analysis of educational policy. It proposes that policy behavior in education (as in other policy areas) can be interpreted and understood as a strategy of "compensatory legitimation," i.e., as an attempt by the state to retrieve what has been lost in the erosion of its own legitimacy. In a comparative review of educational policy in the Federal Republic of Germany and the United States the paper shows how three major policy modes can usefully be analyzed as strategies of compensatory legitimation: the increased involvement of the courts in educational policy ("legitimation by legalization"), experimentation and planning ("legitimation by expertise"), and the introduction of participatory arrangements into the policy process ("legitimation by participation"). In addition to demonstrating the utility of the construct, it is argued that, while expectations of the state with regard to the legitimating (or re-legitimating) capacity of these strategies may be considerably exaggerated, they may effectively override other possible intentions of educational policy, including those of reform and change.

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1. THE EROSION OF LEGITIMACY AND THE STATE'S RESPONSE: POLICIES AS STRATEGIES OF COMPENSATORY LEGITIMATION

Recent scholarship in the social sciences in general, and in Political Science in particular, has come to pay increasing attention to the question of legitimacy of political regimes. While the notion of legitimacy itself has a long and distinguished history in social and political thought, the rather intense preoccupation with the legitimacy of the modern state as a problem is a rather recent and striking phenomenon (Kopp and Müller 1980) -- engaging as diverse a group of people as the authors of the Trilateral Commission's "Report on the Governability of Democracies" (Crozier et al. 1975), the entire 1975 convention of the West German Political Science Association (Kielmannsegg 1976; Ebbighausen 1976), critics of the stature of Ralf Dahrendorf (1979) and Sheldon Wolin (1980), and a wide range of scholars within and outside the Marxist tradition on both sides of the Atlantic (Offe 1972; 1976; Habermas 1975; Lindberg et al. 1975; Rothchild 1977; Wolfe 1977; Freedman 1978; Vidich and Glassman 1979). The argument which lies at the heart of this preoccupation postulates, on a variety of grounds, a rather serious problem of credibility and acceptability on the part of the modern state in its relationship to its society and its citizens -- "authority hath been broken into pieces" as Schaar (1969, 276) lets a 17th century gentleman from The Whitehall Debates define the issue in its most general terms. More specific conceptualizations of the issue range from Rose's (1980) and Kavanagh's (1980) emphasis on the trade-off between regime effectiveness and civic consent to Offe's view of the problem of legitimacy as a threat to the state's "monopoly of politics" and as the tendency, based on the very nature of the capitalist state, towards an increasing "loss of

state" (Entstaatlichung) in politics (1976, 98-99). Common to most conceptions of the legitimacy issue is the notion that, as the range and scope of the state's activities increase, there is a corresponding, or, indeed, disproportionate increase in the need for legitimation (Habermas 1975, 71) -- a need which the state tends to satisfy by even further expanding its activities, thus perpetuating the spiral of increasing legitimacy needs which are forever harder to satisfy.

Defining the nature of the issue is, of course, already a way of hypothesizing about its origins and causes. Where the emphasis in conceiving of the problem of legitimacy is, as in the case of Renate Mayntz and others, on the limitations in the "directive capacity" of the political system (1975), the search for the roots of the problem leads right to the issue of "the increased load of tasks undertaken by modern capitalist governments" (Lindberg 1975, x) and the phenomenon of "overloaded politics" around which Richard Rose has just edited another book (1980). Where, on the other hand, the problem of the legitimacy deficit of the modern state is seen in terms of shortcomings of existing modes of representation, the explanatory effort tends to concentrate on the loss of credibility and functioning of the party system and on the concomitant erosion of party identification (cf. Kaase 1980; Berger 1979; etc.) or, more broadly, on the costs of the "competitive democratic form of legitimation" (Habermas 1975, 74) altogether. In Offe's more probing perspective on the legitimacy issue, the modern capitalist State, as a result of the contradictions in its own "directive imperatives" ("kontradiktorische Steuerungsimperative", 1976, 93) has lost the ability to legitimate itself on normative grounds, and is thus left with the alternative strategies for "legitimating" its continued existence through either material gratification or coercive repression -- each of which, as Offe argues,

tend only to further exacerbate rather than solve the real legitimacy problem (1976, 95-103).

It is clear to Offe as well as to all those whose analysis of the legitimacy issue derives from some variant of a basically Marxist theory of the state that at the very heart of the legitimacy problems of the modern state lies the class structure of capitalist society. Habermas argues: "Because the reproduction of class societies is based on the privileged appropriation of socially produced wealth, all such societies must resolve the problem of distributing the surplus social product inequitably and yet legitimately" (1975, 96), and sees the inherent difficulty of accomplishing this task as one of the main sources of the state's legitimacy deficit (cf. ibid., 73). Along somewhat similar lines, Alan Wolfe predicates his analysis of the legitimacy issue on the "inherent tensions between liberalism and democracy" (1977, 329) under conditions of capitalism, and sees the crisis emerge as the late capitalist state, having exhausted solutions to these tensions, becomes a victim of its own contradictions in that it is "called on to solve problems at the same time that its ability to solve them is undermined" (ibid., 10). We find, incidentally, the thrust of this argument reflected in a more specifically educational policy context where both Offe and Levin assess the dilemma of educational reform in capitalist societies as stemming from this same basic contradiction: reform policies with their associated rhetoric tend to generate expectations and needs which, given the highly limited capacity of the capitalist state for genuine change, they prove unable to meet (Offe 1972, 124-126; Levin 1978; cf. Weiler 1979, 54-58).

Interesting and useful as it would be to pursue this general debate on the legitimacy crisis of the modern state, this paper will have to move one

theoretical step further. Taking, for purposes of this argument, the existence of a more or less substantial legitimacy deficit for granted, I argue that the state has a vital interest, an interest of which those holding positions of power are fully cognizant, in making up for as much of this deficit as possible. If legitimacy is slipping away, the state needs to recapture it in order to avoid one of two extreme prospects, each of which would place the continued existence of the state in serious jeopardy: The assertion of the state's authority through coercion, with its resulting danger of massive resistance, or the continuous "purchase" of legitimacy through various kinds of material gratification -- a strategy which the finite nature of the state's resources would seem to render unrealistic in the long run. This moves the question of how the state responds to its own legitimacy crisis into the center of our concern, and allows us to formulate some propositions on how the state, in setting and implementing policy, tends to cope with this need for a compensatory response to its legitimacy problems, or, as Habermas puts it, how the state "attempts to compensate for legitimation deficits through conscious manipulation" (1975, 71).

I am taking educational policy as a case in point, because it seems that, for a variety of reasons, both the intensity of the legitimacy problem and the state's desire to compensate for it are particularly pronounced when it comes to education. Without pursuing too far the question of why this should be so, it seems reasonable to suggest that the answer has a good deal to do with the key role of education in allocating statuses and in socializing different groups in society into accepting and sustaining existing arrangements for structuring access to wealth, status, and power. Furthermore, it seems that, in the case of educational policy, the general legitimacy problem of the modern state is compounded by an unprecedented crisis of

confidence in the performance of the public schools (e.g., for the U.S., Elam 1978; Gallup 1979; 1980; for West Germany, Rolff et al. 1980, 13-44). However, focussing our discussion, or at least the illustration of our theoretical argument, on education does not mean that the basic structure of the argument would not be similarly applicable to the state's activities in other policy areas; indeed, it would eventually be very useful to engage in a comparative examination of the legitimacy issue across different areas of state-sponsored societal activities such as health delivery, urban renewal, energy policy, etc.

Against this background of the erosion of legitimacy and of the State's preoccupation with regaining at least some of what has been lost, my theoretical argument suggests that the State tends to adopt strategies in its policy behavior which appear to be particularly well suited for this compensatory purpose. At least for the field of educational policy (but quite possibly for others as well), three such strategies seem to stand out as forming a particularly important and widespread "core" of the policy behavior pattern of the modern state: (a) the "legalization" or "judicialization" of educational policy, primarily reflected in the increased role of the courts in educational policy; (b) the utilization of expertise in the policy-making process, especially through such devices as experimentation and planning; and (c) the development and stipulation of participatory forms of decision-making in education. By implication, the argument also suggests that the state's preoccupation with the utility of policy strategies for purposes of compensatory legitimation is likely to be at the expense of other possible policy intentions, notably those of reform and change.

The main body of this paper will be an initial attempt to show how the concept of legitimacy and, in particular, the theoretical construct of

compensatory legitimation as a determinant of the choice of policy strategies may be useful for the comparative analysis of educational policy in advanced capitalist states. This attempt uses educational policy in the Federal Republic of Germany and the United States as cases in point; the theoretical claim of the paper, however, would have the argument potentially extend to other advanced capitalist societies (and possibly others) as well.

2. STRATEGIES OF COMPENSATORY LEGITIMATION

2.1 Legitimation by Legalization: The Role of the Courts

Among the things which strike any observer of educational policy over the past decade or so in countries like the United States and West Germany (as well as others) would undoubtedly be the tremendous increase in the role played by legal norms and judicial decisions. In both countries the salience of legal norms for the shaping of educational policy and practice and the importance of judicial decisions for the task of running schools has been one of the most conspicuous phenomena; nor is education particularly unique in this respect: other areas of social policy, notably in the fields of energy, health, transportation, have similarly seen legal norms and processes assume a more and more central role (see, for some interesting observations on the energy field, Nelkin and Pollak 1981, 155-166; Kitschelt 1980, 272-279). Between them, court and legislatures in both countries have invaded in great strides decision-making territory which used to be the uncontested domain of school administrators in (German) state ministries of education and (American) local school district offices. The range of educational issues which has been affected by this process has encompassed, again in both countries, a wide variety of questions, ranging all the way from matters of discipline to the determination of educational objectives and from teacher tenure to equity in access and resource allocation (see, for the U.S., Kirp & Yudof 1974; Kirp 1977; Greenberg et al. 1979; Feeley et al. 1979; for West Germany, Richter 1973; 1974; 1976; Oppermann 1976; Faber 1978; Nevermann & Richter 1979; Laaser 1980). For the U.S., Kirp has noted recently that the pace of judicial involvement, after the peak that was reached in the period between the U.S. Supreme Court's Brown (1954) and its Rodriguez decisions (1973)

has now "slackened noticeably" (1977, 120). Even so, however, the overall influence of the judiciary on the shape of contemporary educational policy in the U.S. remains one of the most significant elements in the politics of American education in recent history.

In terms of both its importance and its basic thrust, the parallel process of legalization referred to as Verrechtlichung of education in the West German context has been remarkably similar, and has given rise to a rather substantial German literature on education and the law (see above). Nevermann identifies four main indicators for the process of legalization in German educational policy: (a) the increase in the number of legal specifications through administrative rules and regulations, especially in the context of educational reform; (b) the increase in the number of court cases dealing with either the admissibility of certain policies or the legality of concrete decisions and developments in schools; (c) the increased role of parliamentary legislation as a source of educational norms; and (d) the growing use of legal arguments in the political debate over educational policy (1979, 132). Richter's typology of the kinds of educational issues for which legalization and judicialization has become particularly important emphasizes issues of socialization (as in controversies over curriculum change), differentiation (as in disputes over the timing and criteria of selection in education), and "pluralism" (as in conflicts among different societal interests over their expectations of the educational system) (1974, 11-18). The new prominence of the legalization of education issue found its perhaps most telling reflection when the 51st German Juristentag (the periodic synod of the German legal profession) placed the issue prominently on its agenca (cf. Oppermann 1976; Richter 1976).

My focus in this discussion is not so much on the litigational element,

but on another judiciary-related development which is constitutional rather than litigational in nature. I am referring to the judicial review debate which centers on the notion of the Gesetzesvorbehalt (statutory reserve), and which has culminated in a number of decisions by the Federal Constitutional Court (Bundesverfassungsgericht [BVerfG]) expressly stating the need for making a wide range of educational policy decisions the subject of formal legislative action rather than merely, as had increasingly become the custom, of administrative decree (for a more detailed analysis of the Court's role in educational policy, see Weiler 1981). One important part of the reasoning behind this position stems from the Court's attempt to overcome the restrictive effects of the classical legal construct of the "special authority relationship" (besonderes Gewaltverhältnis), which used to define and restrict the role of "special populations" such as civil servants, students, and prisoners vis-à-vis the state, in the direction of universalizing the validity of the equal protection guarantee (Art. 19) of the West German Basic Law (cf. Oppermann 1976, C 46-47; Nevermann 1979, 132-133; Richter 1976, 2; Laaser 1980, 1349-1352; Faber 1978, 218-221; the Court's major decisions on this matter are found in BVerfGE[2/] 34, 165-201; 41, 251-269; 45, 400-421; 47, 46-85).

This desire to overcome the vestiges of an earlier, more etatist and authoritarian legal perspective on the status of schools and their inhabitants was clearly one of the important motivations for the courts to assert the West German constitutional version of an "equal protection clause" in the principle of the "statutorization" of education (for a comparison with American developments on the equal protection issue, see Kirp 1973; 1977, 118-120; Weiler 1981, 33-34). In addition, however, and even more powerfully, the Court's position was determined by an increasing concern over what it

saw as a major "legitimacy deficit" in the way in which important educational policy decisions were arrived at. This deficit was seen as stemming from the conspicuous non-involvement of parliamentary legislatures in the process of setting educational norms and objectives and the resulting disproportionate share of power that had thus accrued to the executive bureaucracy in matters educational. Against this practice, the Court postulates that ". . . the democratic principle of democracy would demand that the regimentation of important domains of life should at least in its basic outline fall under the responsibility of the democratically legitimated legislature itself and be designed in a public process of decision-making which would weigh all the different and sometimes conflicting interests." (BVerfGE 41, 260). While considerable debate continues on this point -- especially on the operational meaning of how much regulatory detail the "basic outline" of such regimentation should provide (cf. especially Oppermann 1976, C48-C62; Richter 1976, 22-23 and passim) -- the principle of parliamentary and legislative responsibility for major aspects of education (the "parliamentarization" of education) has been firmly established and enforced in such a wide range of educational policy issues as the decision of whether or not to introduce sex education, the exclusion of students from school, the restructuring of the upper level of secondary schools, the introduction of an obligatory "orientation level" (Förderstufe) in grades 5 and 6, etc. (cf. Weiler 1981).

The nature of this paper makes us less interested in the legal argumentation and its conclusions, but rather in the overall political role and function of the process of the legalization of education in its twin aspects of "statutorization" and "parliamentarization". In order to pursue this interest, we need to further differentiate our initial proposition about the legitimacy deficit of the modern state. For this purpose, we can assume that

different elements of the state tend to be differentially affected by the problem of legitimacy. It could well be, for example, that in a multi-level polity the local level of state authority maintains a relatively intact basis of legitimacy, while there is more of a problem with legitimacy as one moves up to the less immediately tangible and transparent levels of state and federal government. In the context of this paper, I am particularly interested in arguing that there exists, in countries like the U. S. and West Germany, an important "legitimacy gradient" between the different branches or "powers" of political authority, and that this gradient runs from a low point in the executive branch of government, which seems most seriously affected by the legitimacy crisis, to a "high point" in the judiciary, where legitimacy still seems to have its most solid point of anchorage. In between, one would place the legislative institutions which, on the one hand, still seem to enjoy (in the eyes of the German Constitutional Court, at least) the legitimizing halo of the principle of representation while, on the other hand, suffering by association from the specific kind of legitimacy crisis which, according to Berger (1979), Kaase (1980), Wolin (1980), and others, tends increasingly to affect party systems and their role in the political process in Western democracies. From this perspective, it would seem to make sense to see the increased role of the courts in educational policy both as a further <u>symptom</u> of the legitimacy deficit, especially of the other two branches of government, and as a strategy to <u>compensate</u> for this loss of legitimacy through mobilizing the relatively intact store of legitimacy of the judicial branch. This strategy, if we take the American and German cases as examples, works in two ways. In the German case, as exemplified in the Court's emphasis on the "parliamentarization" of education, the judicial authority takes all major educational policy decisions out of the hands of what, from the point of view

of legitimacy, is the weakest link in the chain of state institutions, and adds the weight of its own prestige to the reasserted role of parliamentary representation as the source of legitimate policy in as critical an area of state activity as education. It is not surprising that the bureaucracy tends to resent this reassignment of authority which, for a rather vital and extensive sector of public policy, sharply reduces the role of the administration as a source of regimentation (see, for example, the reference in Laaser 1980, 1346, to the indignant reactions of the Bavarian Minister of Education).

At a certain level of comparison, it would seem that, albeit in a slightly different way, the courts have been playing a similar role in the U.S. In the context of discussing the effects which the series of equity-related court decisions of the Serrano kind have had on subsequent legislative and allocative action by state and federal lawmakers, Kirp sees the courts as "affording new legitimacy to particular equity-based concerns" (1977, 121; cf. Elmore and McLaughlin 1981, 312, 321, and passim) -- an observation which is further born out by the development of legislation for the education of handicapped children (Kirp, ibid., 135). It seems that, in both the American and the German case, courts have a capacity for making legislative institutions do things which they don't seem to be able or willing to do on their own. This important auxiliary role of the courts is one of the instances of what I have called "compensatory legitimation"; I would venture to suggest that it occurs in other policy areas besides education as well. In any event, it is clear that, in both cases, the courts' decisions have resulted in considerable legislative activity: towards greater equity in school finance and more adequate provisions for the education of handicapped children in the U.S., towards court-stipulated statutory norms for curriculum development, school organization, and disciplinary action in the Federal

Republic. From the point of view of the legitimacy argument, however, there seems to be at least one important difference in the impact the courts have had in the two countries. In the U.S., the main thrust of the courts' message to the state's legislative and allocative authorities appears to have been material in nature: court decisions have tended to affirm substantive principles of educational policy in the form of equity standards (output or outcome), guidelines for bilingual education, and the like. By contrast, the German courts, and especially the Federal Constitutional Court, appear to have been much more reluctant to commit themselves and the ensuing legislative process to any material principles; instead, the main thrust there has been on mandating a particular process which, in the form of the Parlamentsvorbehalt, made certain kinds of educational issues subject to formal legislative action. Even where, as in the case of weighing parents' rights against the state's authority over education, substantive principles were involved, the German Court's ruling always tended to adopt a procedural solution. This difference may well have something to do with different judicial styles and traditions in the two countries, but probably also with the fact that our analysis of the German case has concentrated on the rather peculiar mode of jurisprudence of the Constitutional Court which, by the very nature of its judicial review mandate, has a propensity for procedural rather than material solutions (see on this characteristic of judicial review also Cappelletti and Cohen 1979, passim).

The relationship between the judiciary and the other branches of government in matters of educational policy is likely to be even more complex than our brief analysis of the German Constitutional Court's decisions and of some of the instances of the judicialization of American education suggests (for an excellent review of the complexity of that relationship in

the Serrano case, see Elmore and McLaughlin 1981; cf. Clune 1979). It seems, however, that the notions of the courts as agents of "compensatory legitimation", i.e., of the legalization of education as an attempt to close the legitimacy gap which has emerged in the stewardship of public education, provides us with at least one useful tool for disentangling this relationship. At the same time, however, adopting this perspective also reveals a further and even more preoccupying dimension of the legitimacy issue.

Even though it is true, at least in the German case, that the Court's mandate for "parliamentarization" has shifted responsibility for "essential" decision-making in education from a "weak" (in terms of legitimacy) towards a relatively stronger branch of the state's authority, there is some reason to doubt whether this shift has adequately taken care of the problem of legitimacy, and whether parliamentary institutions in the modern state do not face legitimacy problems of their own. Doubts of this kind feed on at least two different kinds of observations. On the one hand, there is an increasing body of analysis of the politics of advanced industrial societies which questions the viability and credibility of existing systems of parliamentary representation. This problem is presented variably as a result of "overload" of representative systems (e.g., Rose 1980) or, more poignantly, as the result of "a long-term decay of the collective agents of representation that once would have channeled new forces into the system: the political parties" (Berger 1979, 40). Following up on diagnoses of the mid-sixties on the decline of parliamentary institutions in Western Europe (Graubard 1967), Berger concludes that the process has continued since then, and attributes much of the current preoccupation with the legitimacy of the state to "the parties' diminished ability to receive the signals of changing social values and interest, let alone to express these changes in new

programs, or to translate them into policy" (op. cit., 48).

Another, related reason for questioning the notion of the intact legitimacy of parliamentary institutions of representation lies in the spectacular growth of various extra-parliamentary forms of political expression and aggregation, notably in the form of "citizens' initiatives". What Berger calls "the new politics outside" (op. cit., 38) has acquired considerable political significance in most Western democracies, and needs to be seen both as a symptom of the decline of traditional parliamentary representation and as a means to restore credible and legitimate avenues for the articulation and aggregation of social interests (e.g., Nelkin and Pollak 1981; von Alemann 1975; Offe 1972, 153-168).

Whatever the true nature and extent of the "crisis of representation" (and we will have to return to this issue in a later part of this paper), it seems that there remains to be something problematic about seeing the institution of parliament as the effective and ultimate answer to the problem of legitimacy in a matter as critical and susceptible to issues of credibility as education. If this is so, there are at least two ways of interpreting how the increased involvement of the courts in educational policy issues may affect the problem: In one sense, the courts' insistence on the legislative mandate of parliamentary institutions may, indeed, bolster the prestige and credibility of the institution and help it overcome its own "legitimacy deficit". In another, less sanguine sense, the seriousness of the problem of representation in the modern state may be such that even as prestigious an institution as the judiciary may provide little remedy, and that sooner or later the issue of the legitimacy of setting educational norms may call for another, more penetrating scrutiny.

2.2 Legitimation by Expertise: Experiments and Planning

While basically a time-honored theme, the relationship between knowledge and decision-making has come to be the focus of a great deal of recent inquiry in education as in other fields (e.g., Suppes 1978; Human Interaction Research Institute 1976; C. Weiss 1977; Lindblom and Cohen 1979; Lynn 1978; and Sage's new journal, Knowledge, among many others). While the theoretical basis for some of this work is relatively thin, a number of propositions about the role of knowledge and research in the politics of social policy formation are beginning to emerge. Especially with regard to the social sciences, we find Rivlin's notion of a "forensic social science" (1973), Levin's argument for a "heuristic" role of the social sciences (1976, 92-93), or a variety of formulations which have in common the notion of social science research "shaking up" conventional wisdoms and persuasions (e.g., Kuhlmann 1970, I/139). Lindblom's and Cohen's recent piece on "usable knowledge" (1979) both analyzes and questions the conditions under which "authoritativeness" of "professional social inquiry" can be achieved. While some of these approaches will be well worth developing further, our discussion in this paper is more narrowly predicated on the notion that one of the key elements in the relationship between research and policy is that of legitimation. Over and above, or even regardless of, the substantive results of any particular research activity conducted in a policy domain, the very fact that a set of policy decisions has been preceded or accompanied by research tends to confer enhanced legitimacy upon that decision. It is this proposition which moves the issue of knowledge utilization into the framework of our concerns with legitimacy: If it can be argued on theoretical grounds that the utilization of research-based knowledge in the process of making policy provides one possible strategy for enhancing the legitimacy of that process, then it would

make sense to look at actual instances of knowledge utilization from this perspective and to expect from it an improved understanding of the modalities of knowledge use in policy. We will do this, by way of illustration, with regard to experimentation as a particular modality of knowledge production and knowledge use in the making of educational policy.

To stay, for just another moment, with assessing the state of the field, however, it is instructive to see how little attention an otherwise booming literature on knowledge use has paid to this particular theme. With the r table exception of a review essay by Dorothy Nelkin (1979), the otherwise rich content of the first volume of the new journal Knowledge does not seem to come even into the vicinity of asking the question of whether and how and under what kinds of conditions knowledge is utilized, implicitly or explicitly, in the context of policy legitimation, or even whether it makes sense to look at knowledge use from this perspective. Lindblom's and Cohen's book limits itself to some passing references to "strong desires of decision-makers to see their decisions in a perspective of rational thought" (1979, 82), or to "rituals", comparable to "dancing in tribal societies", which make "some people feel better if they make their decisions after the ceremonies of analysis, no matter how inconclusive the analysis" (ibid., 84). To be sure, there is recognition of the social nature of the knowledge system in terms of what Holzner calls "the social conditions for and the structural distribution of trust in the knowledge system" (1979, 223; cf. Holzner and Marx 1979), and there are frequent references to the use of scientific research as "ammunition" (Wilson 1978) or as a means to give policy decisions "a patina of scientific respectability" (J. Weiss 1979, 448). The notion, however, that the question of legitimacy may play a crucial role in the relationship between expertise and power is, at least in the American literature,

surprisingly sparse, notable exceptions such as the work of Primack and von Hippel (1974) for the field of science and technology notwithstanding (cf. Nelkin 1979 for some further examples). Without at this point wanting to pursue the theme of significant differences in the theoretical agenda between North America and Western Europe, it does deserve mention that the legitimizing (or re-legitimizing) function of knowledge and research has received a good deal more attention especially in the West German literature where, it seems, Habermas' notion that "extensions of organizational rationality can compensate for those legitimation deficits that do appear" (1975, 93) has had more effect on the development of thought about the relationship between research and policy. This seems to be particularly true where the field of education is concerned (e.g., Kuhlmann 1970; Haller and Lenzen 1977; Raschert 1974; Philipp and Rösner 1980; Becker and Jungblut 1972; Blankertz 1978).

I would now like to narrow this general theme of knowledge use as a strategy of compensatory legitimation down to one particular and rather popular manifestation of the linkage between research and policy: experimentation. Both the use of one form or another of experimental programs in the context of preparing, designing, or implementing policy decisions, and the scholarly analysis of experimentation as a policy (and reform) strategy has been one of the most conspicuous phenomena in the last two decades in a good many countries of the Western (and non-Western) world. This is hardly surprising, for the promise of this strategy had seemed almost too good to be true: "Reforms as experiments" -- the classical paradigm of scientific methodology applied to the realities of public policy, with the prospect of being able to say, with scientific conviction and credibility, that one social program was "better" than another, that advocates of a given policy were "right" and its

opponents "wrong" (or the other way around, as the case or the data may be). The notion was attractive enough, and the belief in its utility derived from some early social experiments like the Manhattan Bail Bond experiment (Riecken and Boruch 1974, 1-2) and from Campbell's pioneering work on the utilization of experimental designs in social policy situations (e.g., 1969). In an attempt to substantiate the notion that "systematic experimental trials of proposed social programs have certain important advantages over other ways of learning what programs (or program elements) are effective under what circumstances and at what cost" (Riecken and Boruch 1974, 3), the (U.S.) Social Science Research Council's Committee on Social Experimentation devoted a major effort in the early seventies to elaborate "A Method for Planning and Evaluating Social Intervention" (Riecken and Boruch 1974; cf. Boruch and Riecken 1975). Experimental programs in education looked large in this early phase of developing and improving the concept and practice of experimentation and included educational television in the U. S. and abroad, vocational education and counseling programs, curriculum development, early childhood education etc. (cf. Riecken and Boruch 1974, 308). Major federal programs in the field of education (Head Start, Follow Through, Titles I, III, VII, and VIII of the Elementary and Secondary Education Act (ESEA) and others) went through rather large-scale experimental phases before being fully adopted, modified or abandoned (cf. Pincus 1974, 129-131).

Neither the notion of launching and evaluating social and educational programs on an experimental basis nor the theoretical and methodological discussion of "reforms as experiments" was limited to the United States. In the introduction of a comprehensive system of secondary schooling in Sweden in the fifties and early sixties, experimental studies of a number of proposed elements of the new system played a rather significant role in

reinforcing the arguments of the advocates of the reform (Heidenheimer 1978, 22-25), even though some of the findings were later challenged on the basis of some reanalysis of the data (Heidenheimer 1974, 404). In the Federal Republic of Germany, the initiative of the Bildungsrat in 1969 (Deutscher Bildungsrat 1969) to establish a major experimental program of Gesamtschulen (comprehensive secondary schools) alongside the traditional, three-tier school system was ostensibly predicated on the classical experimental conception of assessing the differential impact of two "treatments" (i.e., types of school systems) upon essentially similar populations of students. The initiative spawned a host of experiments not only of comprehensive forms of post-elementary schooling, but of a number of other educational innovations as well; as of the end of 1977, a survey lists a total of 611 educational experiments as either completed or ongoing (Bund-Länder-Kommission 1978; cf. Bildung und Erziehung 1976).

This is not the time and place to deal with the many interesting questions which the notion of experimentation in policy raises (cf. Weiler 1973; 1979). In the context of this paper's general argument, I would like to show that, as part of the overall relationship between research and policy, experimentation provides a particularly instructive case in point for the use of research as a means of compensatory legitimation. This is so for two reasons. First of all, given its prominent standing as the most genuinely scientific of all methodological constructs in research (cf. Wilson 1978, 90-92), the experiment commands an exceptionally high level of prestige and credibility, notwithstanding some recent questions about its eminence (Phillips 1981). The notion of experimentally "exploring" the strengths and weaknesses of alternative policy propositions thus exemplifies -- in the eyes of the public as well as those of policy-makers -- a particularly powerful source of

"organizational rationality" and, thus, a particularly rich and compelling source of added legitimacy for the policy process. Indeed, it seems that it is the legitimacy of the process, rather than that of its results, which stands to gain the most from the "symbolic power" (Mann 1975, 281) of the scientific connotation of the experiment -- a point which is pursued with particular reference to education by Becker and Jungblut (op. cit.).

The second characteristic of experimentation which is relevant to the issue of legitimation has less to do with its underlying methodological construct, but more with its inherent utility as a vehicle of conflict management. The consideration and possible implementation of alternative policies, notably in such fields as education, is rarely conflict-free; it tends to be marked by more or less vigorous controversies over the premises and presumed effects of a proposed policy (cf. House 1974, 301-306). Proposals such as bilingual education programs, minimum competency testing, or sex education already carry a good deal of conflict potential, not to mention plans to desegregate school systems or to "comprehensivize" secondary schooling. It seems that, in situations of this kind, the device of the experiment has the unique advantage of seemingly constructive temporizing, of defusing a potentially or actually explosive political situation: "Trying out" something new is capable of placating both the advocates of the status quo and the advocates of change, for whom the experiment is at least a "foot in the door" towards eventual change on a larger scale. If this argument is correct, the legitimacy-generating capacity of the experiment as a policy vehicle would go even beyond that which is derived from its scientific halo: Experimentation in this capacity responds precisely to one of the most acute and preoccupying legitimacy dilemmas of the modern state, namely how to deal with conflict without either resorting to coercion or risking disintegration --

either of which would be potentially fatal for the continued functioning of the state.

Let me illustrate this two-fold argument about the relationship between experimentation and legitimacy in a concrete case. When, at the end of the 1960s, the West German Bildungsrat conceived and adopted a major experimental program designed to evaluate comparatively two different forms of post-elementary education -- the traditional three-tiered structure and the new comprehensive Gesamtschule -- the rationale and its political persuasiveness relied heavily on the inherent prestige of the underlying scientific construct: It seemed eminently rational and "objective" not to jump to any conclusion as to which school form was better, but to let the stringent conditions of a more or less true experiment decide the issue. As I and others have argued (Weiler 1973, 51; cf. Raschert 1974), this notion was highly fallacious from the outset, given the fundamentally different educational objectives which the two school forms were meant to achieve; nonetheless, the initial weight of the scientific connotation of the program was considerable. The continued and ample use of experimental programs in other educational areas throughout the 1970s (largely under the auspices of the Bund-Länder-Kommission) indicates a continuing belief in the effectiveness of this strategy, at least on the part of policy-makers. As it turns out, decisions for or against introducing comprehensive schools on a larger scale were ultimately taken with hardly any regard for such results as the experimental research program was able to produce, but primarily on grounds of the preferences of the dominant political groups in each of the German Länder -- a development not entirely unlike that of the early Head Start program in the United States, where the program was continued by the Nixon administration in spite of rather discouraging results of the experimental evaluation (cf. C. Weiss 1970).

At the same time, the experimental program of comprehensive schools in West Germany provides an instructive example for the utility of experimentation as an instrument of conflict management. For a variety of reasons, the issue of comprehensive vs. conventional differentiated schooling had come to polarize the controversy between Social and Free Democrats, on the one hand, and Christian Democrats, on the other, over the meaning and importance of equal educational and social opportunity. In that situation, either an all-out introduction of comprehensive schools or the unmitigated retention of the conventional school system would have brought the West German state to the verge of a major crisis. This potential conflict was effectively moderated and defused by the device of the experimental program; as I observed at the time:

> From the point of view of generating 'objective' evidence on the relative performance of two different systems of education, the experimental program was a failure virtually from its beginning. At the same time, however, it was highly successful in two ways that had nothing to do with its scientific intentions: First, it helped to overcome the deadlock of an intensely polarized political situation by providing the framework for a compromise that was acceptable to both sides. Secondly, and perhaps even more importantly, the experimental program created what may be called a 'cooling-out' condition which allowed the system to tolerate the conflict between two divergent philosophies of education. (1973, 51).

One can carry this argument one step further and suggest that experiments in education as elsewhere provide a symbolic tribute to the general expectation that the modern state should be genuinely committed to reform -- an expectation which heavily reform-laden political rhetoric in many countries has been instrumental in producing (cf. Habermas 1975, 70). If we follow the arguments developed by Offe (1972, 124-126) and others that the modern capitalist state, while rhetorically committed to change and reform, is structurally incapable of bringing about real reform, then any device which

would effectively simulate the state's interest in, and commitment to, reform would be of critical importance from the point of view of legitimation (cf., for an interpretation of the West German experience from this perspective, Naschold 1974; also Philipp and Rösner on "latent functions of experiments", 1980, 187-189). One recent observer summarizes the favorable attitudes especially of the more conservative political groupings towards the notion of experimental programs along these lines. Experimental programs, he argues, provide political leadership with an opportunity to (a) demonstrate their interest in reform; (b) protect the existing, conventional system for the duration of the experiment from all attempts at reform; and (c) postpone any political decision about educational reform for many years, and to legitimate this postponement on the basis of scientific requirements. (Tillmann 1979, as cited by Philipp and Rösner 1980, 188). For the moment, I am leaving this three-fold argument about the relationship between experimentation and legitimacy as a proposition for further study. It appears, however, that it explains a good deal of the observations made, and briefly summarized here, of policy developments in both the U.S. and West Germany.

This part of the paper had begun to discuss in more general terms the relationship between professional expertise and the state's legitimacy in policy, before narrowing the discussion down to the specific manifestation of this relationship in policy experimentation. Clearly, there are other such manifestations which would serve as well to demonstrate the utility of the notion of compensatory legitimation through the use of knowledge and expertise. One such is planning -- a set of activities which, again especially in education, brings professional expertise to bear on the task of designing, initiating, and implementing policy. It is striking how the notion of educational planning has succeeded, even in countries with as strong

a traditional anti-planning bias as the U.S. and West Germany, in becoming a more or less integral tool in the instrumentarium of educational policy. It would seem plausible to pursue this question along lines very similar to those used in discussing experimentation, and to examine the hypothesis that it is precisely the rationality of the planning process and its symbolic value which tend to make the institution of planning another effective strategy of compensatory legitimation. Without further pursuing the matter at this point, and with reference to a good deal of work which has already been done on the subject (Weiler 1980; Luhmann 1975; Schatz 1976; Scharpf 1973; Naschold 1972; etc.), it seems important to add this particular perspective on the legitimizing role of planning to our agenda for further investigation.

2.3 Legitimation by Participation: The Case of Curriculum Reform

The third strategy of "compensatory legitimation" that I would like to discuss is that of participation. The basic argument here is that the state, faced with an erosion of legitimacy which stems in no small part from the particular credibility problems of systems of representation, attempts to regenerate the basis of its own legitimation by tolerating or actually setting up various schemes for client involvement or citizen participation. While the potential relevance of this discussion ranges across a number of policy areas, education once again seems to have been a particularly eventful forum for the trying out of a number of participatory devices. For the U.S. alone, a carefully selected recent bibliography on citizen participation in education (Davies and Zerchykov 1978) lists over 800 titles. Coombs and Merritt provide a useful comparative typology of various forms of "the public's role in educational policy-making" (1977), and under Dietrich

Goldschmidt's leadership, a joint German-Swedish Commission has prepared what is probably the most thorough and comprehensive comparative study in this field to date, dealing with democratization and participation in schools and universities in the two countries (see summary volume by Wilhelmi 1974). In the U.S., "community control of schools" (Levin 1970) has been an issue for some time, and provisions for client participation in the design and implementation of a wide variety of educational programs has become almost a standard ingredient in federal and state legislation, parent involvement in the development of programs for handicapped children and local "School Improvement Councils" in California being cases in point (cf. Zerchykov and Davies 1980).

What is interesting for us in this phenomenon is its relationship to the question of legitimacy. Habermas (1975, 72-73) discusses the propensity of a legitimacy-conscious administration to "experiment with the participation of those affected" (1975, 72), even though he considers the strategy, with Naschold (1972, 43-49), as a rather "risky means of meeting legitimation deficits" for the administration (Habermas 1975, 73). Much of the substantial volume of recent literature investigating the phenomenon of citizens' initiatives, especially in Europe, sees its emergence as an indication of the erosion of the legitimacy of conventional mechanisms and structures of interest aggregation and, at the same time, sees the toleration, and indeed, encouragement of the phenomenon by the state as a way of coping with the very crisis which the emergence of citizens' initiatives reveals (cf. von Alemann 1975; Rodenstein 1978; Matthöfer 1977; Offe 1972). In short, it seems that there is good reason to include participation in our set of hypotheses on compensatory legitimation, and to see whether the reality of educational policy provides any indication on the utility of this kind of reasoning. For purposes

of this paper, I have chosen the area of curriculum reform as one of the domains of educational policy where, at least in some settings, questions of legitimacy have loomed particularly large and where, as I will try to show, participatory devices have become one of the strategies for coping with this problem. It will undoubtedly be instructive to look at other areas of educational policy (or, indeed, at other policy areas) from the same perspective: parent involvement in the administration of categorical grants in the U.S., as well as participatory schemes in energy and urban planning policy would be instructive cases in point (for an interesting account for the field of technology policy, see Nelkin 1977; Nelkin and Pollak 1981).

The issue of curriculum reform and curriculum planning presents, from the point of view of the legitimacy of the state's sponsorship of public education, a particularly intriguing problem. Inasmuch as curricula, whatever their actual effect on the outcome of the learning process might be, represent the most tangible and detailed expression of an educational system's material objectives, plans for developing or changing curricula tend to reach rather deeply into the normative fabric of society and thus become a political phenomenon of considerable salience: "The determination of the public school curriculum is not just influenced by political events; it is a political process in important ways" (Kirst and Walker 1971, 480). But this is not quite the whole story. The making of curricular decisions is inherently conflictual: it is part of a process upon which a variety of different and not necessarily convergent considerations are brought to bear: the individual's interest in the optimal development of his or her talents; the society's actual or anticipated needs for certain kinds of skills and qualifications; the needs, based on the existing structures of power, to socialize people into certain attitudes and dispositions towards authority,

performance, cooperation, etc.; and the formative weight of the pattern of social relations which prevails in the educational process itself (see Preuss 1975, especially 79-104). Given this complexity of the very nature of decisions on curriculum, and given that these decisions tend to be the prerogative of public authority, at least in state-sponsored systems of education, the question of the basis on which the state makes these decisions, i.e., the legitimacy of the state's authority in curriculum matters, becomes a matter of considerable significance. From a comparative point of view, it is interesting that the nature and the intensity of this concern differ widely from one society to another. In the U.S., the question has so far arisen with any major degree of intensity only with regard to such relatively isolated matters as sex education, even though further controversy seems to lie ahead on such issues as -- and more recently -- evolution. If there is any systematic analytical reflection on the question of the legitimacy of the state's role in curriculum development, it does not yet seem to have made a dent in the vast literature dealing with curriculum problems in this country. By contrast, a good deal of European and especially German writing on curriculum reform in recent years seems absolutely consumed with the question of how curriculum decisions acquire legitimacy -- mirroring the high salience of a number of political controversies over curriculum reform projects, notably the Rahmenrichtlinien in the states of Hesse and North Rhine-Westphalia (cf. Frey et al. 1975; Hameyer 1976; Raschert 1977; Preuss 1975; etc.). For the German Bildungsrat, in its 1973 recommendations on the organization and administration of education in the Federal Republic, the question of the legitimation of curricular decisions became almost paradigmatic for the entire task of reorganizing the structure of educational decision-making (Deutscher Bildungsrat 1973, A14-A23).

In a very real sense, the issue of curriculum decisions could serve as a case in point to illustrate all three of our propositions on compensatory legitimation in educational policy: legalization, expertise, and participation. As I have briefly indicated in an earlier part of this paper, the question of educational content and curriculum was one of the areas for which the German Constitutional Court had explicitly prescribed the legitimating responsibility of parliament: given the nature of curricular decisions and their importance in defining the orientation of the educational system, it was felt that decisions in this area -- at least decisions of principle (Rahmenrichtlinien) -- needed whatever legitimatory weight the representative nature of parliamentary institutions was able to confer (Baumert and Raschert 1978, 22-23; Raschert 1977, 27-31; on the limits of the legal dimension of curricular legitimacy, see Künzli 1976, 201-202).

At the same time, the discussion about the legitimacy of curricular decisions has provided another case for pursuing the second of our themes, the role of expertise and research as instruments of legitimation, compensatory or otherwise. Tying the curricular decision process more effectively into the ongoing world of research, especially into the subject-matter disciplines to which the various elements of the curriculum pertain, is seen as adding further to whatever legitimacy the increased legalization and "parliamentarization" will generate (cf. Raschert 1977, 33-36; Hameyer et al. 1976, 291-339). The core of this argument follows the basic rationale which I discussed in the preceding section of this paper. It remains to be seen, however, to what extent this strategy of enhancing the legitimacy of curricular decisions through the increased involvement of relevant scholarship has, in fact, been adopted. For the case of West Germany, Raschert seems to find only limited developments in this direction (1977, 35-36).

What interests us here, however, is the remaining avenue of searching for new sources of legitimacy through the participation of parents, teachers and students in the process of curriculum development and reform. The argument is relatively straightforward: Given the erosion in the legitimacy of formal institutions of representation such as parliaments, curriculum decisions, which have extraordinarily high legitimation needs, are expected to derive added credibility and legitimacy from the participation of those affected by the outcomes of the decision process. In the West German case, with its rather centralized administrative traditions, this argument is complemented by the need for decentralizing the decision-making function: participation at the "base" of the system makes sense only when the base has something to say. The ideal, from the point of view of maximizing legitimacy, is the "autonomous and participatory school" ("die verselbständigte und partizipatorische Schule", Deutscher Bildungsrat 1973, A19).

The programmatic emphasis on participatory arrangements in educational policy is well-enough documented for both the U.S. and West Germany, even though the rationale, justification, and modalities differ. How far this strategy has been implemented and what light the experience of implementation may shed on the validity of the legitimation argument remains to be seen. In a study dealing with teacher participation in curriculum development in Berlin, Baumert and Raschert find (1978) that a certain amount of prior external legitimation of the "principles" of a new curriculum by the authorities seems to be a necessary condition for the functioning of teachers' participation in designing the details of the curricular package. Faced with the difficulties of reconciling the results of a participatory curriculum reform project with the existing set of ministerial groundrules, a review of the "Reutlinger Projekt" concludes on a note of exasperation: "A curriculum

is legitimate to the extent that it enables its addressees to participate in discussions about legitimacy." (Hameyer et al. 1976, 244). In a study of citizen participation in the St. Louis area, Salisbury finds, among other things, an extremely conservative bias prevailing among participants, making them rather ardent defenders of the status quo in educational policy and highly suspicious of any indications of conflict (1980, 194, 199). I will leave it to a more careful and comprehensive review of findings like these to address more conclusively the question of whether the legitimation thesis does help to understand better what happens to participation schemes once they are introduced.

There is, however, an important literature which tends to be rather skeptical with regard to the capacity of these kinds of participatory arrangements to be of effective assistance in solving the modern state's legitimacy problems. Preuss (1975, 94) suspects that these arrangements simply substitute different social groups for the state in the exercise of the same kind of bureaucratic power, and that the process will therefore not lead to any qualitative change in the basic experiential framework of the curriculum. Offe, in his more general discussion of citizen's initiatives, directs his criticism at the basic ambivalence of participation which consists in that it can always serve as an instrument for the ruler as well as the ruled (1972, 127-134; 153-168). Naschold sees the same ambivalence of participatory arrangements in education as in the health sector, but recognizes in them at least the potential for creating new forms of "collective self-organization" at the level of the individual school. He predicts, however, that as soon as those effects of participation begin to appear, the state educational bureaucracy will feel threatened and react with new restrictive initiatives in the development of curricula and other educational issues (1974, 24-28).

It is these kinds of criticisms and doubts, for some of which initial empirical evidence is becoming available, which will have to form an important part of our agenda for the further exploration of the legitimating capacity of participation in educational policy.

3. CONCLUSION

It is through the vehicle of policy that states rule, benefit, and deprive their societies. For the political scientist, the crucial question is how this relationship works, and why it works the way it does under a given set of historical conditions. The choice of policy strategies, the reasons why the state chooses to adopt specific ways for sponsoring societal activities such as education, has thus been the major concern of this chapter and the issue with which our basic theoretical propositions have tried to deal.

Assuming that the modern state in all of its policy domains, but especially in educational policy, faces a major "legitimacy deficit", we have postulated that "compensatory legitimation" becomes a key criterion for the state's choice of policy strategies. In a first review of this assertion, we have identified three kinds of strategies which seem to be particularly widespread in the educational policy of advanced Western countries -- legalization, expertise, and participation -- and have tried to show that each of them seems to look like a promising avenue towards helping the state recover some of its losses in legitimacy. In each case, we have shown that certain characteristics of each strategy seem to be particularly well-suited for this purpose of "compensatory legitimation": the traditional role of the courts as "guardians of legitimacy", the scientific prestige as well as the conflict management potential of the experiment, and the remedial quality of participatory arrangements vis-à-vis the shortcomings of traditional forms of representation. At a first level of approximation, there is thus some reasonably plausible evidence that the choice of policy strategies may well have something to do with each strategy's putative effectiveness as an instrument of compensatory legitimation. It will obviously require much

more probing work to demonstrate this linkage in more compelling terms.

At the same time, however, we have also found that in each case, there may be a serious flaw in the expectation that the strategy in question will indeed generate the kind of legitimation or re-legitimation which it is considered capable of generating: In the case of legalization, we have seen that the Federal Constitutional Court, while recognizing that there is a problem of legitimacy in the making of educational policy, sees a solution where, in fact, one of the very problems of legitimacy may lie, namely, in the parliamentary process. Even though the case of the Gesamtschule has yielded instructive evidence for the utility of experimentation especially as an instrument of conflict management in highly polarized political situations, it remains to be seen -- in the case of the Gesamtschule as elsewhere -- just how effective this moderating quality of the experiment is likely to be in the long run. Finally, I have pointed out how the notion and practice of participatory decision-making is being challenged precisely from the point of view of confusing or mystifying the real issue of legitimating policy decisions.

To the extent that further work along these lines bears out the notion of compensatory legitimation as a determinant of the choice of policy strategies, it would have another important implication for the assessment and understanding of the policy behavior of the state in advanced modern societies such as the ones discussed in this paper. If the state's behavior in setting and implementing educational policy is primarily determined by concerns with its own legitimacy and with how to sustain, restore, or regain it, then other motivations would of necessity become less significant. In other words: the state's preoccupation with maximizing the compensatory legitimation effect of its policy behavior may well come to compete or conflict

with other possible determinants of policy behavior. Reform and change, as some of the examples in this paper have already indicated, may be a case in point: As Carnoy and Levin (1976) and others have argued, genuine reform in education (such as an effective redistribution of educational opportunity or a major shift in educational and curricular objectives) appears only feasible as part of more encompassing changes in the structural characteristics of society (cf. Weiler 1978). If this is true, then the notion of effective change and reform in education would seem to be very fundamentally at variance with the objectives of legitimation or re-legitimation which, whatever their strategies, tend to be oriented towards maintenance of the existing system. This issue of the incompatibility of legitimation and change may well form the most important challenge which further work in this area will face.

NOTES

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2. BVerfGE is the standard citation for decisions of the West German Federal Constitutional Court (Bundesverfassungsgericht) which are published as Entscheidungen des Bundesverfassungsgerichts (Tübingen: J.C.B. Mohr). The first number refers to the volume, the second to the page(s).

REFERENCES

Jürgen Baumert, Jürgen Raschert et al., Vom Experiment zur Regelschule. Stuttgart: Klett-Cotta 1978

Egon Becker and Gerd Jungblut, Strategien der Bildungsproduktion. Frankfurt: Suhrkamp 1972

Suzanne Berger, Politics and Antipolitics in Western Europe in the Seventies, in Daedalus, Winter 1979, 27-50

Bildung und Erziehung, Schulversuche in der Bundesrepublik Deutschland, 29, 5 (October 1976)

Herwig Blankertz, Handlungsrelevanz pädagogischer Theorie, in Zeitschrift für Pädagogik 24 (1978), 2, 171-182

Robert F. Boruch and Henry W. Riecken (eds.), Experimental Testing of Public Policy. Boulder, Colo.: Westview Press 1975

Bund-Länder-Kommission für Bildungsplanung und Forschungsförderung, Informationsschrift 1978 über Modellversuche im Bildungswesen. Bonn: BLK 1978

Donald T. Campbell, Reforms as Experiments, in American Psychologist 24, 4 (April 1969), 409-429

Mauro Cappelletti and William Cohen, Comparative Constitutional Law: Cases and Materials. Indianapolis: Bobbs-Merrill 1979

Martin Carnoy and Henry M. Levin, The Limits of Educational Reform. New York: McKay 1976

William H. Clune III, with Robert E. Lindquist, Serrano and Robinson: Studies in the Implementation of Fiscal Equity and Effective Education in State Public Law Litigation, in Malcolm M. Feeley et al., Schools and the Courts, Volume II. Eugene, Oregon: ERIC 1979, 67-120

Fred S. Coombs and Richard L. Merritt, The Public's Role in Educational Policy-Making, in Education and Urban Society 9, 2 (February 1977), 167-196

Michel J. Crozier, Samual P. Huntington, and Joji Watanuki, The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission. New York: New York University Press 1975

Ralf Dahrendorf, Life Chances. Chicago: University of Chicago Press 1979

Don Davies and Ross Zerchykov, Citizen Participation in Education: Annotated Bibliography. Second Edition. Boston: Institute for Responsive Education 1978

Deutscher Bildungsrat, Einrichtung von Schulversuchen mit Gesamtschulen. Stuttgart: Klett 1969

Deutscher Bildungsrat, Zur Reform von Organisation und Verwaltung im Bildungswesen: Teil I. Bonn: Bildungsrat 1973

Rolf Ebbighausen (ed.), Bürgerlicher Staat und politische Legitimation. Frankfurt: Suhrkamp 1976

Stanley M. Elam (ed.), A Decade of Gallup Polls of Attitudes Toward Education, 1969-1978. Bloomington: Phi Delta Kappa 1978

Richard Elmore and Milbrey McLaughlin, Reform and Retrenchment: The Politics of California School Finance Reform (Report N-1679-NIE). Santa Monica: Rand 1981

Klaus Faber, Vielfalt und Einheitlichkeit im Bildungswesen, bundesstaatliche Aufgabenverteilung und parlamentarische Verantwortung, in Bildung und Erziehung 31, 3 (June 1978) 211-224

Malcolm M. Feeley et al., Schools and the Courts: Volume II. Eugene, Oregon: ERIC 1979

James O. Freedman, Crisis and Legitimacy. Cambridge: Cambridge University Press 1978

Karl Frey et al., Curriculum-Handbuch (3 vols.). München: Piper 1975

George H. Gallup, Eleventh Annual Gallup Poll of the Public's Attitudes Toward the Public Schools, in Phi Delta Kappan 61 (1979) 1, 33-45

George H. Gallup, The 12th Annual Gallup Poll of the Public's Attitudes Toward the Public Schools, in Phi Delta Kappan 62 (1980) 1, 33-46

Stephen R. Graubard (ed.), A New Europe? Boston: Beacon 1967

Jack Greenberg et al., Schools and the Courts: Volume I. Eugene, Oregon: ERIC 1979

Jürgen Habermas, Legitimation Crisis. Boston: Beacon 1975

H.D. Haller and D. Lenzen (eds.), Wissenschaft im Reformprozess: Aufklärung oder Alibi? (Jahrbuch für Erziehungswissenschaft 1977/78). Stuttgart: Klett-Cotta 1977

Uwe Hameyer et al. (eds.), Bedingungen und Modelle der Curriculuminnovation. Weinheim: Beltz 1976

Arnold Heidenheimer, The Politics of Educational Reform: Explaining Different Outcomes of School Comprehensivization in Sweden and West Germany, in Comparative Education Review 18, 3 (October 1974), 388-410

- Major Reforms of the Swedish Education System: 1950-1975. Washington: The World Bank 1978

Burkart Holzner and Evelyn Fisher, Knowledge in Use: Considerations in the Sociology of Knowledge Application, in Knowledge 1, 2 (December 1979), 219-244

Burkart Holzner and John H. Marx, Knowledge Application: The Knowledge System in Society. Boston: Allyn and Bacon 1979

Ernest R. House, The Politics of Educational Innovation. Berkeley: McCutchan 1974

Human Interaction Research Institute, Putting Knowledge to Use. Los Angeles: Human Interaction Research Institute 1976

Max Kaase, The Crisis of Authority: Myth and Reality, in Richard Rose (ed.), Challenge to Governance. Beverly Hills: Sage 1980, 175-198

Dennis Kavanagh, Political Leadership: The Labours of Sisyphus, in Richard Rose (ed.), Challenge to Governance. Beverly Hills: Sage 1980, 215-235

Peter Graf Kielmannsegg (ed.), Legitimationsprobleme politischer Systeme (Sonderheft 7/1975 of Politische Vierteljahresschrift). Opladen: Westdeutscher Verlag 1976

David L. Kirp, Judicial Policy-Making: Inequitable Public School Financing and the Serrano Case (1971), in Allan P. Sindler (ed.), Policy and Politics in America. Boston: Little, Brown 1973

- Law, Politics, and Equal Educational Opportunity: The Limits of Judicial Involvement, in Harvard Educational Review 47, 2 (May 1977), 117-137

- and Mark G. Yudof, Educational Policy and the Law: Cases and Materials. Berkeley: McCutchan 1974

Michael W. Kirst and Decker F. Walker, An Analysis of Curriculum Policy-Making, in Review of Educational Research 41, 5 (1971), 479-509

Herbert Kitschelt, Kernenergiepolitik: Arena eines gesellschaftlichen Konflikts. Frankfurt: Campus 1980

Manfred Kopp and Hans-Peter Müller, Herrschaft und Legitimität in modernen Industriegesellschaften: Eine Untersuchung der Ansätze von Max Weber, Niklas Luhmann, Claus Offe, Jürgen Habermas. München: Tuduv 1980

Rudolf Künzli, Legitimation von Innovationszielen, in Uwe Hameyer et al. (eds.), Bedingungen und Modelle der Curriculuminnovation. Weinheim: Beltz 1976, 197-213

Caspar Kuhlmann, Schulreform und Gesellschaft in der Bundesrepublik Deutschland 1946-1966, in Saul B. Robinsohn (ed.), Schulreform im gesellschaftlichen Prozess: Volume I. Stuttgart: Klett 1980, 1/1 - 1/206

Andreas Laaser, Die Verrechtlichung des Schulwesens, in Max-Planck-Institut für Bildungsforschung, Bildung in der Bundesrepublik Deutschland, Vol. II. Hamburg: Rowohlt 1980, 1343-1375

Henry M. Levin (ed.), Community Control of Schools. Washington: Brookings 1970

Henry M. Levin, Education, Life Chances, and the Courts: The Role of Social Science Evidence, in Nelson F. Ashline et al., Education, Inequality, and National Policy. Lexington, Mass.: Heath 1976, 73-100

- The Dilemma of Secondary Comprehensive School Reforms in Western Europe, in Comparative Education Review 22, 3 (October 1978), 434-451

Leon N. Lindberg et al., Stress and Contradiction in Modern Capitalism. Lexington, Mass.: Heath 1975

Charles E. Lindblom and David K. Cohen, Usable Knowledge: Social Science and Social Problem Solving. New Haven: Yale University Press 1979

Niklas Luhmann, Politische Planung. Opladen: Westdeutscher Verlag 1975 (Second edition)

Laurence E. Lynn (ed.), Knowledge and Policy: The Uncertain Connection. Washington: National Academy of Sciences 1978

Michael Mann, The Ideology of Intellectuals and Other People in the Development of Capitalism, in Leon N. Lindberg et al. (eds.), Stress and Contradiction in Modern Capitalism. Lexington, Mass.: Heath 1975, 275-307

Hans Matthöfer (ed.), Bürgerbeteiligung und Bürgerinitiativen: Legitimation und Partizipation in der Demokratie angesichts gesellschaftlicher Konfliktsituationen. Villingen: Neckar 1977

Renate Mayntz, Legitimacy and the Directive Capacity of the Political System, in Leon N. Lindberg et al. (eds.), Stress and Contradiction in Modern Capitalism. Lexington, Mass.: Heath 1975, 261-274

Frieder Naschold, Zur Politik und Ökonomie von Planungssystemen, in Politische Vierteljahresschrift, Sonderheft 4/1972. Opladen: Westdeutscher Verlag 1972, 13-53

- Schulreform als Gesellschaftskonflikt. Frankfurt: Athenäum 1974

Dorothy Nelkin, Technological Decisions and Democracy: European Experiments in Public Participation. Beverly Hills: Sage 1977

- Scientific Knowledge, Public Policy, and Democracy: A Review Essay, in Knowledge 1, 1 (September 1979), 106-122

- and Michael Pollak, The Atom Besieged: Extraparliamentary Dissent in France and Germany. Cambridge, Mass.: M.I.T. Press 1981

Knut Nevermann, Überlegungen zur Bürokratisierung des Schulwesens, in Werner Raith (ed.), Wohin steuert die Bildungspolitik? Frankfurt: Campus 1979, 123-136

- and Ingo Richter (eds.), Verfassung und Verwaltung der Schule. Stuttgart: Klett-Cotta 1979

Claus Offe, Strukturprobleme des kapitalistischen Staates. Frankfurt: Suhrkamp 1972

- Überlegungen und Hypothesen zum Problem politischer Legitimation, in Rolf Ebbighausen (ed.), Bürgerlicher Staat und politische Legitimation. Frankfurt: Suhrkamp 1976, 80-105

Thomas Oppermann, Nach welchen rechtlichen Grundsätzen sind das öffentliche Schulwesen und die Stellung der an ihm Beteiligten zu ordnen?, in Verhandlungen des einundfünfzigsten Deutschen Juristentages, Band I, Teil C. München: C.H. Beck 1976, C5-C108

Elmar Philipp and Ernst Rösner, Modellversuche im Schulsystem, in Hans G. Rolff et al. (eds.), Jahrbuch der Schulentwicklung, Band 1. Weinheim: Beltz 1980, 171-190

D.C. Phillips, Toward an Evaluation of the Experiment in Educational Contexts, in Educational Researcher, June/July 1981, 13-20

John Pincus, Incentives for Innovation in the Public Schools, in Review of Educational Research 44, 1 (Winter 1974), 113-143

Ulrich K. Preuss, Bildung und Herrschaft: Beiträge zu einer politischen Theorie des Bildungswesens. Frankfurt: Fischer 1975

Joel Primack and Frank von Hippel, Advice and Dissent: Scientists in the Political Arena. New York: Basic Books 1974

Jürgen Raschert, Gesamtschule: Ein gesellschaftliches Experiment. Stuttgart: Klett 1974

- Probleme der Legitimation von Lehrplänen und Richtlinien, in H.D. Haller and D. Lenzen (eds.), Wissenschaft im Reformprozess. Stuttgart: Klett-Cotta 1977, 21-37

Ingo Richter, Bildungsverfassungsrecht: Studien zum Verfassungswandel im Bildungswesen. Stuttgart: Klett 1973

- Grundgesetz und Schulreform. Weinheim: Beltz, 1974

- Nach welchen rechtlichen Grundsätzen sind das öffentliche Schulwesen und die Stellung der an ihm Beteiligten zu ordnen? (Referat auf dem 51. Deutschen Juristentag 1976). Berlin: Max-Planck-Institut für Bildungsforschung (mimeo.)

Henry W. Riecken and Robert F. Boruch, Social Experimentation: A Method for Planning and Evaluating Social Intervention. New York: Academic Press 1974

Alice M. Rivlin, Forensic Social Science, in Harvard Educational Review 43, 1 (February 1973), 61-75

Marianne Rodenstein, Bürgerinitiativen und politisches System: Eine Auseinandersetzung mit soziologischen Legitimationstheorien. Giessen: Focus 1978

Hans G. Rolff et al. (eds.), Jahrbuch der Schulentwicklung: Band I. Weinheim: Beltz 1980

Richard Rose (ed.), Challenge to Governance: Studies in Overloaded Politics. Beverly Hills: Sage 1980

Joseph Rothschild, Observations on Political Legitimacy in Contemporary Europe, in Political Science Quarterly 92, 3 (Fall 1977), 487-501

Robert H. Salisbury, Citizen Participation in the Public Schools. Lexington, Mass.: Heath, 1980

John H. Schaar, Legitimacy in the Modern State, in Philip Green and Sanford Levinson (eds.), Power and Community. New York: Pantheon 1969, 276-327

Fritz W. Scharpf, Planung als politischer Prozess: Aufsätze zur Theorie der planenden Demokratie. Frankfurt: Suhrkamp 1973

Heribert Schatz, The Development of Political Planning in the Federal Republic of Germany, in Klaus von Beyme et al. (eds.), German Political Systems. Beverly Hills: Sage 1976, 41-68

Patrick Suppes (ed.), Impact of Research on Education: Some Case Studies. Washington: National Academy of Education 1978

Arthur J. Vidich and Ronald M. Glassman (eds.), Conflict and Control: Challenge to Legitimacy of Modern Governments. Beverly Hills: Sage 1979

Ulrich von Alemann (ed.), Partizipation, Demokratisierung, Mitbestimmung. Opladen: Westdeutscher Verlag 1975

Hans N. Weiler, The Politics of Educational Innovation: Recent Developments in West German School Reform (A Report to the National Academy of Education). Stanford: School of Education 1973 (mimeo.)

- Education and Development: From the Age of Innocence to the Age of Skepticism, in Comparative Education 14, 3 (October 1978), 179-198

- Notes on the Comparative Study of Educational Innovation. Stanford: Institute for Research in Educational Finance and Governance, 1979

- Educational Planning and Social Change. Paris: The Unesco Press 1980

- Equal Protection, Legitimacy, and the Legalization of Education: The Role of the Federal Constitutional Court in West Germany. Stanford: Institute for Research in Educational Finance and Governance 1981

Carol H. Weiss, The Politicization of Evaluation Research, in Journal of Social Issues 26 (1970), 2, 57-68

- Using Social Research in Public Policy Making. Lexington, Mass.: Heath 1977

Janet A. Weiss, Access to Influence: Some Effects of Policy Sector on the Use of Social Science, in American Behavioral Scientist 22, 3 (January/February 1979), 437-458

Jutta Wilhelmi, Demokratisierung und Mitwirkung in Schule und Hochschule (Kurzfassung des Kommissionsberichts). Braunschweig: Westermann 1974

James Q. Wilson, Social Science and Public Policy: A Personal Note, in Laurence E. Lynn (ed.), Knowledge and Policy: The Uncertain Connection. Washington: National Academy of Sciences 1978, 82-92

Alan Wolfe, The Limits of Legitimacy: Political Contradictions of Contemporary Capitalism. New York: Free Press 1977

Sheldon S. Wolin, Reagan Country, in The New York Review of Books, December 18, 1980

Ross Zerchykov and Don Davies with Janet Chrispeels, Leading the Way: State Mandates for School Advisory Councils in California, Florida, and South Carolina. Boston: The Institute for Responsive Education 1980